

B. L. asks the Appeals Board of the Utah Labor Commission to review the Administrative Law Judge's dismissal of Mr. L.'s charge of unlawful employment discrimination against Intermountain Power Services Corporation ("IPSC") under the Utah Antidiscrimination Act, Title 34A, Chapter 5, Utah Code Annotated.

The Appeals Board exercises jurisdiction in this matter pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. §34A-5-107(11).

BACKGROUND AND ISSUE PRESENTED

On February 25, 1997, Mr. L. submitted his employment discrimination charge against IPSC to the Utah Antidiscrimination and Labor Division. After investigation, the Division found no cause to believe that IPSC had engaged in unlawful employment discrimination against Mr. L.. Mr. L. then requested a de novo evidentiary hearing on his charge against IPSC. The matter was therefore transferred to the Labor Commission's Adjudication Division and assigned to Judge LaJeunesse.

After completion of discovery, but prior to the evidentiary hearing, IPSC moved for summary dismissal of Mr. L.'s discrimination charge pursuant to §34A-5-106(2) of the Utah Antidiscrimination Act, on the grounds that undisputed facts established Mr. L. was physically, mentally, or emotionally unable to perform the duties required by his employment with IPSC.¹

On October 19, 2001, Judge LaJeunesse granted IPSC's request for summary dismissal of Mr. L.'s discrimination charge. Mr. L. then filed a timely motion for review of the ALJ's decision with the Appeals Board. Consequently, the issue now before the Appeals Board is the same as that addressed by Judge LaJeunesse: Does the record establish that there is no genuine issue of material fact regarding Mr. L.'s physical, mental, or emotional inability to perform the duties required by his employment with IPSC.

FINDINGS OF FACT

Having reviewed the record in this matter, the Appeals Board finds that the ALJ's determination of undisputed fact is thorough and accurate. The Appeals Board therefore adopts the ALJ's findings of fact._____

DISCUSSION AND CONCLUSION OF LAW

Section 34A-5-106(1)(a)(i)(H) of the Utah Antidiscrimination Act prohibits discrimination against any person otherwise qualified for employment if such discrimination is based on disability. However, §34A-5-106(2)(a) of the Act specifically provides that the foregoing provision of law cannot be construed to prevent "the termination of employment of an individual who is physically, mentally, or emotionally unable to perform the duties required by that individual's employment." IPSC's motion for summary judgment contends there is no genuine dispute as to Mr. L.'s inability

to perform the duties required by his employment at IPSC.

The ALJ's decision carefully identifies the duties required by Mr. L.'s employment at IPSC, as well as the various medical restrictions that prevent Mr. L. from performing those duties. As also noted by the ALJ, Mr. L. has sought and obtained social security disability benefits, workers' compensation permanent total disability benefits, and long term disability benefits based on findings that he cannot work. Mr. L. has provided no plausible explanation reconciling his inability to work for purposes of these various disability programs with his claim that he is able to work for purposes of pursuing his employment discrimination claim. To the contrary, the uncontroverted facts of Mr. L.'s actual work record at IPSC and the opinions of various medical experts establish that Mr. L. is not able to perform the duties of employment available at IPSC.

In light of the foregoing, the Appeals Board affirms and adopts the reasoning and conclusions of the ALJ and concludes that the Mr. L.'s employment discrimination claim should be summarily dismissed.

ORDER

The Appeals Board affirms the decision of the ALJ and denies Mr. L.'s motion for review. It is so ordered.

Dated this 24th day of May, 2002.

Colleen S. Colton, Chair
Patricia S. Drawe

DISSENT

I respectfully dissent from the majority decision of the Appeals Board. Although the Utah Administrative Procedures Act authorizes summary judgment in administrative proceedings such as this, summary judgment is only appropriate if there is no genuine dispute as to any material facts and the moving party is entitled to judgment as a matter of law. (See Rule 56, Utah Rules of Civil Procedure.) Furthermore, because summary judgment precludes a trial on the merits, any doubt concerning questions of fact should be resolved in favor of the party opposing summary judgment. Beehive Brick Co. v. Robinson Brick Co., 780 P.2d 827 (Utah App. 1989).

Having reviewed the parties' respective submissions supporting and opposing IPSC's motion for summary judgment in the light most favorable to Mr. L.'s claim, I am unable to conclude that there are no genuine disputes regarding several questions of material fact, such as: Mr. L.'s ability to perform the essential functions of his job at IPSC; whether IPSC was reasonably able to accommodate Mr. L.'s disabilities; and whether IPSC's stated reasons for discharging Mr. L. were pretextual.

In light of what I believe to be genuine disputes of material fact, I conclude IPSC is not entitled to judgment as a matter of law. Consequently, I would set aside the ALJ's entry of summary

judgment against Mr. L. and allow this matter to proceed to a hearing on the merits.

L. Zane Gill

1. Because Judge LaJeunesse granted summary dismissal on the basis set forth above, he did not address IPSC's two other arguments for summary dismissal, nor does the Appeals Board address those other arguments in this decision.